



Rep. Dwight Kay

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LRB097 07376 RLC 53433 a

1 AMENDMENT TO HOUSE BILL 2585

2 AMENDMENT NO. _____. Amend House Bill 2585 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing Section 11-20.1 as follows:

6 (720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)

7 (Text of Section after amendment by P.A. 96-1551)

8 Sec. 11-20.1. Child pornography.

9 (a) A person commits child pornography who:

10 (1) films, videotapes, photographs, or otherwise
11 depicts or portrays by means of any similar visual medium
12 or reproduction or depicts by computer any child whom he or
13 she knows or reasonably should know to be under the age of
14 18 and at least 13 years of age or any severely or
15 profoundly mentally retarded person where such child or
16 severely or profoundly mentally retarded person is:

1 (i) actually or by simulation engaged in any act of
2 sexual penetration or sexual conduct with any person or
3 animal; or

4 (ii) actually or by simulation engaged in any act
5 of sexual penetration or sexual conduct involving the
6 sex organs of the child or severely or profoundly
7 mentally retarded person and the mouth, anus, or sex
8 organs of another person or animal; or which involves
9 the mouth, anus or sex organs of the child or severely
10 or profoundly mentally retarded person and the sex
11 organs of another person or animal; or

12 (iii) actually or by simulation engaged in any act
13 of masturbation; or

14 (iv) actually or by simulation portrayed as being
15 the object of, or otherwise engaged in, any act of lewd
16 fondling, touching, or caressing involving another
17 person or animal; or

18 (v) actually or by simulation engaged in any act of
19 excretion or urination within a sexual context; or

20 (vi) actually or by simulation portrayed or
21 depicted as bound, fettered, or subject to sadistic,
22 masochistic, or sadomasochistic abuse in any sexual
23 context; or

24 (vii) depicted or portrayed in any pose, posture or
25 setting involving a lewd exhibition of the unclothed or
26 transparently clothed genitals, pubic area, buttocks,

1 or, if such person is female, a fully or partially
2 developed breast of the child or other person; or

3 (2) with the knowledge of the nature or content
4 thereof, reproduces, disseminates, offers to disseminate,
5 exhibits or possesses with intent to disseminate any film,
6 videotape, photograph or other similar visual reproduction
7 or depiction by computer of any child or severely or
8 profoundly mentally retarded person whom the person knows
9 or reasonably should know to be under the age of 18 and at
10 least 13 years of age or to be a severely or profoundly
11 mentally retarded person, engaged in any activity
12 described in subparagraphs (i) through (vii) of paragraph
13 (1) of this subsection; or

14 (3) with knowledge of the subject matter or theme
15 thereof, produces any stage play, live performance, film,
16 videotape or other similar visual portrayal or depiction by
17 computer which includes a child whom the person knows or
18 reasonably should know to be under the age of 18 and at
19 least 13 years of age or a severely or profoundly mentally
20 retarded person engaged in any activity described in
21 subparagraphs (i) through (vii) of paragraph (1) of this
22 subsection; or

23 (4) solicits, uses, persuades, induces, entices, or
24 coerces any child whom he or she knows or reasonably should
25 know to be under the age of 18 and at least 13 years of age
26 or a severely or profoundly mentally retarded person to

1 appear in any stage play, live presentation, film,
2 videotape, photograph or other similar visual reproduction
3 or depiction by computer in which the child or severely or
4 profoundly mentally retarded person is or will be depicted,
5 actually or by simulation, in any act, pose or setting
6 described in subparagraphs (i) through (vii) of paragraph
7 (1) of this subsection; or

8 (5) is a parent, step-parent, legal guardian or other
9 person having care or custody of a child whom the person
10 knows or reasonably should know to be under the age of 18
11 and at least 13 years of age or a severely or profoundly
12 mentally retarded person and who knowingly permits,
13 induces, promotes, or arranges for such child or severely
14 or profoundly mentally retarded person to appear in any
15 stage play, live performance, film, videotape, photograph
16 or other similar visual presentation, portrayal or
17 simulation or depiction by computer of any act or activity
18 described in subparagraphs (i) through (vii) of paragraph
19 (1) of this subsection; or

20 (6) with knowledge of the nature or content thereof,
21 possesses any film, videotape, photograph or other similar
22 visual reproduction or depiction by computer of any child
23 or severely or profoundly mentally retarded person whom the
24 person knows or reasonably should know to be under the age
25 of 18 and at least 13 years of age or to be a severely or
26 profoundly mentally retarded person, engaged in any

1 activity described in subparagraphs (i) through (vii) of
2 paragraph (1) of this subsection; or

3 (7) solicits, or knowingly uses, persuades, induces,
4 entices, or coerces, a person to provide a child under the
5 age of 18 and at least 13 years of age or a severely or
6 profoundly mentally retarded person to appear in any
7 videotape, photograph, film, stage play, live
8 presentation, or other similar visual reproduction or
9 depiction by computer in which the child or severely or
10 profoundly mentally retarded person will be depicted,
11 actually or by simulation, in any act, pose, or setting
12 described in subparagraphs (i) through (vii) of paragraph
13 (1) of this subsection.

14 (b) (1) It shall be an affirmative defense to a charge of
15 child pornography that the defendant reasonably believed,
16 under all of the circumstances, that the child was 18 years
17 of age or older or that the person was not a severely or
18 profoundly mentally retarded person but only where, prior
19 to the act or acts giving rise to a prosecution under this
20 Section, he or she took some affirmative action or made a
21 bonafide inquiry designed to ascertain whether the child
22 was 18 years of age or older or that the person was not a
23 severely or profoundly mentally retarded person and his or
24 her reliance upon the information so obtained was clearly
25 reasonable.

26 (2) (Blank).

1 (3) The charge of child pornography shall not apply to
2 the performance of official duties by law enforcement or
3 prosecuting officers or persons employed by law
4 enforcement or prosecuting agencies, court personnel or
5 attorneys, nor to bonafide treatment or professional
6 education programs conducted by licensed physicians,
7 psychologists or social workers.

8 (4) (Blank). ~~If the defendant possessed more than one~~
9 ~~of the same film, videotape or visual reproduction or~~
10 ~~depiction by computer in which child pornography is~~
11 ~~depicted, then the trier of fact may infer that the~~
12 ~~defendant possessed such materials with the intent to~~
13 ~~disseminate them.~~

14 (5) The charge of child pornography does not apply to a
15 person who does not voluntarily possess a film, videotape,
16 or visual reproduction or depiction by computer in which
17 child pornography is depicted. Possession is voluntary if
18 the defendant knowingly procures or receives a film,
19 videotape, or visual reproduction or depiction for a
20 sufficient time to be able to terminate his or her
21 possession.

22 (6) Any violation of paragraph (1), (2), (3), (4), (5),
23 or (7) of subsection (a) that includes a child engaged in,
24 solicited for, depicted in, or posed in any act of sexual
25 penetration or bound, fettered, or subject to sadistic,
26 masochistic, or sadomasochistic abuse in a sexual context

1 shall be deemed a crime of violence.

2 (c) Violation of paragraph (1), (4), (5), or (7) of
3 subsection (a) is a Class 1 felony with a mandatory minimum
4 fine of \$2,000 and a maximum fine of \$100,000. Violation of
5 paragraph (3) of subsection (a) is a Class 1 felony with a
6 mandatory minimum fine of \$1500 and a maximum fine of \$100,000.
7 Violation of paragraph (2) of subsection (a) is a Class 1
8 felony with a mandatory minimum fine of \$1000 and a maximum
9 fine of \$100,000. Violation of paragraph (6) of subsection (a)
10 is a Class 3 felony with a mandatory minimum fine of \$1000 and
11 a maximum fine of \$100,000. Violation of paragraph (6) of
12 subsection (a) is a Class X felony for which the defendant
13 shall be sentenced to a term of imprisonment of not less than 9
14 years and not more than 40 years if the defendant possessed
15 more than one of the same film, videotape, or visual
16 reproduction or depiction by computer in which child
17 pornography is depicted.

18 (d) If a person is convicted of a second or subsequent
19 violation of this Section within 10 years of a prior
20 conviction, the court shall order a presentence psychiatric
21 examination of the person. The examiner shall report to the
22 court whether treatment of the person is necessary.

23 (e) Any film, videotape, photograph or other similar visual
24 reproduction or depiction by computer which includes a child
25 under the age of 18 and at least 13 years of age or a severely
26 or profoundly mentally retarded person engaged in any activity

1 described in subparagraphs (i) through (vii) or paragraph 1 of
2 subsection (a), and any material or equipment used or intended
3 for use in photographing, filming, printing, producing,
4 reproducing, manufacturing, projecting, exhibiting, depiction
5 by computer, or disseminating such material shall be seized and
6 forfeited in the manner, method and procedure provided by
7 Section 36-1 of this Code for the seizure and forfeiture of
8 vessels, vehicles and aircraft.

9 In addition, any person convicted under this Section is
10 subject to the property forfeiture provisions set forth in
11 Article 124B of the Code of Criminal Procedure of 1963.

12 (e-5) Upon the conclusion of a case brought under this
13 Section, the court shall seal all evidence depicting a victim
14 or witness that is sexually explicit. The evidence may be
15 unsealed and viewed, on a motion of the party seeking to unseal
16 and view the evidence, only for good cause shown and in the
17 discretion of the court. The motion must expressly set forth
18 the purpose for viewing the material. The State's attorney and
19 the victim, if possible, shall be provided reasonable notice of
20 the hearing on the motion to unseal the evidence. Any person
21 entitled to notice of a hearing under this subsection (e-5) may
22 object to the motion.

23 (f) Definitions. For the purposes of this Section:

24 (1) "Disseminate" means (i) to sell, distribute,
25 exchange or transfer possession, whether with or without
26 consideration or (ii) to make a depiction by computer

1 available for distribution or downloading through the
2 facilities of any telecommunications network or through
3 any other means of transferring computer programs or data
4 to a computer.

5 (2) "Produce" means to direct, promote, advertise,
6 publish, manufacture, issue, present or show.

7 (3) "Reproduce" means to make a duplication or copy.

8 (4) "Depict by computer" means to generate or create,
9 or cause to be created or generated, a computer program or
10 data that, after being processed by a computer either alone
11 or in conjunction with one or more computer programs,
12 results in a visual depiction on a computer monitor,
13 screen, or display.

14 (5) "Depiction by computer" means a computer program or
15 data that, after being processed by a computer either alone
16 or in conjunction with one or more computer programs,
17 results in a visual depiction on a computer monitor,
18 screen, or display.

19 (6) "Computer", "computer program", and "data" have
20 the meanings ascribed to them in Section 16D-2 of this
21 Code.

22 (7) For the purposes of this Section, "child
23 pornography" includes a film, videotape, photograph, or
24 other similar visual medium or reproduction or depiction by
25 computer that is, or appears to be, that of a person,
26 either in part, or in total, under the age of 18 and at

1 least 13 years of age or a severely or profoundly mentally
2 retarded person, regardless of the method by which the
3 film, videotape, photograph, or other similar visual
4 medium or reproduction or depiction by computer is created,
5 adopted, or modified to appear as such. "Child pornography"
6 also includes a film, videotape, photograph, or other
7 similar visual medium or reproduction or depiction by
8 computer that is advertised, promoted, presented,
9 described, or distributed in such a manner that conveys the
10 impression that the film, videotape, photograph, or other
11 similar visual medium or reproduction or depiction by
12 computer is of a person under the age of 18 and at least 13
13 years of age or a severely or profoundly mentally retarded
14 person.

15 (g) Re-enactment; findings; purposes.

16 (1) The General Assembly finds and declares that:

17 (i) Section 50-5 of Public Act 88-680, effective
18 January 1, 1995, contained provisions amending the
19 child pornography statute, Section 11-20.1 of the
20 Criminal Code of 1961. Section 50-5 also contained
21 other provisions.

22 (ii) In addition, Public Act 88-680 was entitled
23 "AN ACT to create a Safe Neighborhoods Law". (A)
24 Article 5 was entitled JUVENILE JUSTICE and amended the
25 Juvenile Court Act of 1987. (B) Article 15 was entitled
26 GANGS and amended various provisions of the Criminal

1 Code of 1961 and the Unified Code of Corrections. (C)
2 Article 20 was entitled ALCOHOL ABUSE and amended
3 various provisions of the Illinois Vehicle Code. (D)
4 Article 25 was entitled DRUG ABUSE and amended the
5 Cannabis Control Act and the Illinois Controlled
6 Substances Act. (E) Article 30 was entitled FIREARMS
7 and amended the Criminal Code of 1961 and the Code of
8 Criminal Procedure of 1963. (F) Article 35 amended the
9 Criminal Code of 1961, the Rights of Crime Victims and
10 Witnesses Act, and the Unified Code of Corrections. (G)
11 Article 40 amended the Criminal Code of 1961 to
12 increase the penalty for compelling organization
13 membership of persons. (H) Article 45 created the
14 Secure Residential Youth Care Facility Licensing Act
15 and amended the State Finance Act, the Juvenile Court
16 Act of 1987, the Unified Code of Corrections, and the
17 Private Correctional Facility Moratorium Act. (I)
18 Article 50 amended the WIC Vendor Management Act, the
19 Firearm Owners Identification Card Act, the Juvenile
20 Court Act of 1987, the Criminal Code of 1961, the
21 Wrongs to Children Act, and the Unified Code of
22 Corrections.

23 (iii) On September 22, 1998, the Third District
24 Appellate Court in *People v. Dainty*, 701 N.E. 2d 118,
25 ruled that Public Act 88-680 violates the single
26 subject clause of the Illinois Constitution (Article

1 IV, Section 8 (d)) and was unconstitutional in its
2 entirety. As of the time this amendatory Act of 1999
3 was prepared, People v. Dainty was still subject to
4 appeal.

5 (iv) Child pornography is a vital concern to the
6 people of this State and the validity of future
7 prosecutions under the child pornography statute of
8 the Criminal Code of 1961 is in grave doubt.

9 (2) It is the purpose of this amendatory Act of 1999 to
10 prevent or minimize any problems relating to prosecutions
11 for child pornography that may result from challenges to
12 the constitutional validity of Public Act 88-680 by
13 re-enacting the Section relating to child pornography that
14 was included in Public Act 88-680.

15 (3) This amendatory Act of 1999 re-enacts Section
16 11-20.1 of the Criminal Code of 1961, as it has been
17 amended. This re-enactment is intended to remove any
18 question as to the validity or content of that Section; it
19 is not intended to supersede any other Public Act that
20 amends the text of the Section as set forth in this
21 amendatory Act of 1999. The material is shown as existing
22 text (i.e., without underscoring) because, as of the time
23 this amendatory Act of 1999 was prepared, People v. Dainty
24 was subject to appeal to the Illinois Supreme Court.

25 (4) The re-enactment by this amendatory Act of 1999 of
26 Section 11-20.1 of the Criminal Code of 1961 relating to

1 child pornography that was amended by Public Act 88-680 is
2 not intended, and shall not be construed, to imply that
3 Public Act 88-680 is invalid or to limit or impair any
4 legal argument concerning whether those provisions were
5 substantially re-enacted by other Public Acts.

6 (Source: P.A. 96-292, eff. 1-1-10; 96-712, eff. 1-1-10;
7 96-1000, eff. 7-2-10; 96-1551, eff. 7-1-11.)".